

**आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI  
BEFORE SHRI JOGINDER SINGH JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4014/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

Pearl Freight Services Private Limited, B-106 Great Eastern Summit, Sector 15, CBD Belapur, Navi Mumbai-400614	<b>बनाम/</b>  v.	ACIT 10(3) Mumbai
स्थायी लेखा सं./PAN : AADCP1825G		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by:	Shri. S.L Jain & V.A Mishra
Revenue by :	Shri. Rajat Mittal

सुनवाई की तारीख /**Date of Hearing** : 21.12.2017

घोषणा की तारीख /**Date of Pronouncement** : 02.01.2018

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 4014/Mum/2014 for assessment year 2009-10 is directed against the appellate order dated 20.02.2014 passed by learned Commissioner of Income-tax (Appeals)-22, Mumbai (hereinafter called "the CIT(A)") for assessment year 2009-10, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 12.12.2011 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3)(ii) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

“1. On the facts and circumstances of the case and in law, the Assessing Officer erred in completing the assessment U/S 143(3) of the Income Tax Act, 1961 without taking the account of facts available, and detailed explanations submitted duly placed on records by the appellant, in the course of assessment proceedings. The assessing officer has also made presumptive and arbitrary disallowances/additions.

2. The learned assessing officer had made disallowances for loss on sale of motor car of Rs.26686/-stated to have wrongly debited to profit and loss Account even the block of motor cars does not ceased to exists as on 31/03/2009, which is added back to assessee income, however the assessing officer did not allowed mandatory depreciation as per revised calculation which is available to the appellant at the time of sale of motor car in such circumstances.

3. Further the assessing officer has disallowed the expenses of Rs.95,94,810/- claimed by the appellant as in the nature of revenue expenditure for renovation /restoration expenses treating as capital expenditure and is added back without correctly analyzing the commercial expediency involved without giving opportunity to submit detailed explanation in the element of expenses which is no more in existence. If the amount has been incurred for business expediency, quality of payments and quantum may not be a deciding factor for making such additions.

4. An addition of Rs.26,11,067/- is made by the assessing officer as the amount added to the assesses returned income, being amount payable in Balance Sheet as on 31st March,2009.Assessing officer failed to compare the current years amount of Bonus payable with the previous for Bonus payable with the previous year's provision for Bonus payable otherwise it would not have been added back, rather appellant is eligible for deduction of more than what is claimed, hence excessive deduction should be allowed.

5. While making an assessment order assessing officer has disallowed an amount of Rs.35,50,000/- U/s 40(a)(ia) of the income tax Act,1961 and added to the appellant total income on ground of delay in payments of Tax Deducted at Source for the period of April to Feb 2009 before 31st March,2009.The Assessing Officer failed to appreciate that Tax Deducted at Source has been paid before the due dates of filling the return. Appellant is allowable for deduction of full amount hence the same should be allowed as expenses. As per order passed by CIT (A)22 it is directed to verify and allow the credit for taxes paid to the extent of the Credit allowable as per 26AS.

6. Assessing officer has allowed credit tax paid at source of Rs.44,04,422/-only whereas the actual amount is greater than as allowed and same has been claimed to Rs.54,75,522/-. The greater amount as per records should be allowed to be adjusted against tax payable and refund to be paid as per computation as earliest as possible.

7. *The learned assessing officer has making error while charging and computing interest under section 244A and 234D of the act, which may be deleted.*

8. *The assessee prays and craves to you to allow him to add/delete/modify/ratify/alter and crave to alter any/all grounds for appeal before the matter is being heard by you.”*

3. The assessee in this case filed an appeal late by 42 days with the tribunal beyond the time stipulated u/s 253(3) . It is the submission of Id. Counsel for the assessee that the assessee filed an appeal late by 42 days as the CA of the assessee Shri. V.A Mishra who was looking after the affairs of the assessee could not file an appeal in time because he was busy in scrutiny assessments conducted by Revenue and also he was busy in audits. The said Chartered Accountant has given an affidavit to that effect which is placed in file. The Director of the assessee company has also filed an affidavit confirming that the delay in filing an appeal with the tribunal was mainly on account of negligence of the assessee's counsel CA Shri. V.A Mishra, being occupied in other professional engagements. The affidavit of Director is also placed in file. The learned DR objected to condonation of delay in filing of this appeal late by 42 days beyond the time stipulated u/s 253(3) of the 1961 Act. Thus, keeping in view interest of substantial justice vis-a-vis technicalities and in the light of decision of Hon'ble Supreme Court in the case of Collector , Land Acquisition v. Mst. Katiji & Ors. (1987) 167 ITR 0471(SC) , we are inclined to condone the delay of 42 days in filing this appeal late with the tribunal by the assessee beyond the time stipulated u/s 253(3) of the 1961 Act.

4. The assessee is engaged in the business of Cargo handling services. During the course of assessment proceedings u/s. 143(3) r.w.s 143(2) , it was observed by the A.O that assessee has claimed loss on sale of motor car amounting of Rs. 26,686/- which was debited to P&L account. The A.O. observed that block of motor car has not ceased to exist as on 31.03.2009 and hence loss of Rs. 26,686/- as claimed by the assessee is not allowable as deduction . The A.O disallowed the same and added it to the income of the assessee in an assessment framed u/s 143(3) vide assessment order dated 12-12-2011. The assessee carried the matter in appeal to the file of the Id. CIT-A by filing first appeal and the claim of the assessee was rejected by

learned CIT-A because the assessee had itself submitted before learned CIT(A) that it did not wish to press this ground of appeal. The assessee has now come in an appeal before the tribunal . The learned counsel for the assessee submitted that the assessee has admitted before the learned CIT-A that assessee wrongly debited the same to P&L account and agreed for the addition but however the depreciation on block of asset is to be re-computed in accordance with provisions of Section 32 and learned CIT-A has failed to give the said direction to the AO. Our attention was drawn to the order of the authorities below and to page no. 78 of the paper book where the submissions were made before learned CIT-A wherein the assessee agreed to the said addition. Ld DR on the other hand submitted that matter can be restored to the file of the A.O for re-computation of the claim of depreciation by reworking the block of asset as on 31.03.2009.

4.1. We have heard both the parties and perused the material on record . We have observed that the assessee sold motor car but there were other motor cars also existing in the block of assets and the said block of asset of motor car has not ceased to exist as on 31.03.2009 . The assessee has claimed loss on the sale of motor car of Rs. 26,686 which was wrongly debited to P&L account, however the assessee is entitled to the depreciation on the block of asset consisting of motor car remaining after crediting sale proceeds of the motor car sold during the year and to that extent depreciation need to be re-worked to be allowed in accordance with provisions of Section 32 . Thus, this matter needed to be restored to the file of the A.O for re-computation of depreciation in accordance with law after necessary verifications and examination. Needless to say that the AO shall provide proper and adequate opportunity of being heard to the assessee in denovo proceedings in accordance with principles of natural justice in accordance with law. We order accordingly.

5.1. The next issue is w.r.t. disallowance of Renovation expenses. The A.O observed that the assessee has debited Rs. 95,94,810/- in Profit and Loss account on account of office renovation expenses . The assessee was asked to explain the same and the assessee submitted as under:-

*“Renovation expense amounting to Rs. 95,94,810 was incurred for hospitality business which the company intended to start as a diversification of business. The company undertook the renovation of a*

*premises taken on lease under the name and style of "Pearl Hospitality" as a brand name to denote the hospitality business. The assessee company could not manage the start of the business because of local problems and other non-approval/non-sanctioning of various licenses and therefore its directors were of the view that the Company will be unable to take up this business in near future.*

*Sir, the expenses on account of renovation on a rented property may not stand for capitalization for the reason that the assessee is not going to benefit for the expenses being incurred on such account in future and there is no benefit of the expenses being incurred on the revenue generation in future and there is no realizable or residual value for the expenses being incurred and therefore the auditor of the Company has rightly allowed the assessee to write off the expenses during the year."*

5.2. The A.O observed that the assessee has not submitted nature of expenses and details thereof of the renovation expenses incurred by the assessee. The A.O held the same to be capital in nature as the premises were renovated vide assessment framed u/s 143(3) .

5.3 Aggrieved by the assessment framed by the AO u/s 143(3), the assessee filed first appeal before learned CIT(A) and furnish additional evidences which were not admitted by learned CIT-A and the ground of the assessee was dismissed as in the opinion of learned CIT-A , Rules 46A of the Income Tax Rules, 1962 was not complied with . The learned CIT-A partly allowed certain expenses as revenue while the rest of the expenses on renovation was disallowed by holding the same to be capital in nature.

5.4 Aggrieved by the appellate order passed by learned CIT(A) , the assessee has come in an appeal before the tribunal.

5.5 The learned counsel for the assessee submitted that assessee has given replies before the A.O but however details of expenses and the evidences w.r.t. these expenses such as bills/invoices of the expenses were not submitted before the A.O. . The Ld. Counsel for the assessee submitted that assessee submitted details of the expenses and nature thereof of these renovation expenses before the learned CIT-A but however learned CIT-A has not admitted these additional evidences and these evidences goes to the root of the matter and in the interest of the substantial justice , the same may be admitted and then the appeal of the assessee be either adjudicated on merits by tribunal or else matter can be set aside and restored to the file of the A.O for the denovo adjudication of the issue on merits in accordance with law after verification of evidences by the AO. our attention was drawn to page no.

68 of the paper book wherein reply was submitted before the A.O and it was submitted that evidence could not be submitted before the A.O which were later submitted before learned CIT-A but learned CIT-A did not admitted those additional evidences.

5.6 The Ld. DR fairly submitted that if the evidences are allowed to be admitted by tribunal then the matter can be restored to the file of the A.O for verification of these evidences and re-determination of the issue on merits after verification of the evidences.

5.7 We have considered rival contention and perused the material on record . We have observed that the assessee has incurred expenses of Rs. 95,94,810/- on account of renovation expenses of the premises for his hospitality business wherein renovation was carried out by the assessee . The assessee could not file the evidences before the A.O to substantiate its claim that these are revenue expenses allowable under the Act. The assessee has furnished additional evidences before learned CIT-A who has refused to admit the same . After considering the material on record and hearing the parties , We are of the considered view that evidences which were filed before the learned CIT-A need to be admitted and adjudicated on merits in accordance with law to sub-serve the interest of substantial justice. Thus , we hereby direct to admit these additional evidences filed by the assessee before learned CIT(A) and restore the matter to file of the A.O for fresh adjudication of the issue on merits in accordance with law. Needless to say proper and adequate opportunity of being heard shall be provided by the A.O to the assessee in accordance with principle of natural justice in accordance with law. We order accordingly.

6.1 The next issue is with regard to disallowance of provision of bonus for the F.Y 2008-09 made by the assessee in its books of accounts for FY 2008-09 of Rs. 26,11,067/- but the same was paid in the F.Y 2009-10 in the month of October 2009. The assessee has itself during the course of appeal proceeding before learned CIT-A has not pressed this ground of appeal. Reference is made to paper book page no. 81 , wherein the assessee has submitted before learned CIT-A as under:

*“ Bonus is paid in Oct 2009 for Assessment year 2009-10 Rs. 26,11,067/- is wrongly debited to profit and loss account which is*

*accepted and agreed for addition as the action of AO seems to be correct, but since the payment is made in Oct 2009 the expenses can be claimed in AY 2010-11.*

6.2 We did not find any infirmity in the order of learned CIT-A in dismissing the ground of appeal as not been pressed by the assessee because in any case assessee has itself submitted that assessee will claim these expenses in A.Y 2010-11 based on actual payments for the bonus made to the employees in the month of October 2009 which in our considered view is in consonance with provisions of Section 43B(c) r.w.s. 36(1)(ii) . The learned counsel for the assessee has fairly agreed before us that this ground may be dismissed. Hence keeping in view entire factual matrix of the issue we dismiss this ground in the light of the above discussion. We order accordingly.

7.1 The assessee has also raised ground of appeal wherein the assessee has contended that assessee paid the income-tax deducted at source late which is in violation of provisions of Section 40(a)(ia) as it existed in relevant period, as income-tax deducted at source for the period April to February 2009 was not paid before 31.03.2009 , but was paid on 29-09-2009 and hence it violated provision of Section 40(1)(ia) but it was claimed that the same was paid before filing of return of income . We have observed that the assessee has itself submitted before learned CIT-A that assessee has claimed these expenses on which income-tax was deducted at source which was paid late beyond the period prescribed u/s 40(a)(ia) , in AY 2010-11 and thus, the claim of expenses can be allowed in A.Y 2010-11 after verification by the AO . The learned CIT-A has dismissed this ground on the basis of submissions made by the assessee. We do not find any infirmity in the decision of learned CIT-A in dismissing this ground as in any case there will be no prejudice to the assessee as the same expenses shall be allowed in the subsequent year i.e. 2010-11 in which assessee has paid the TDS to the credit of Central Government , after due verification and examination by the AO. We dismiss this ground.

8.1 The next ground raised by the assessee was w.r.t. non granting of total TDS receivable by the assessee, wherein the assessee has been allowed credit of prepaid taxes to the tune of Rs. 44,04,422/- by Revenue as against the claim of TDS of Rs. 54,75,552/- on the grounds that the same was not reflected in 26AS. The learned CIT-A has already appreciated the grievance

of the assessee and directed the A.O to verify the claim of the assessee and allow the credit of prepaid taxes by way of TDS to the extent of the credit available as per 26AS by holding as under:-

*“4.2 I have carefully considered the impugned assessment order, submissions along with the details filed in the paper-book. It is the submission of the appellant that credit for TDS has been claimed at Rs.54,75,552/-, however, the AO had allowed credit only to the extent of Rs.44,04,422/-. Further it was submitted that as per 26AS, the amount of TDS shown was Rs.51,82,418/-. I find in the computation form, the AO had allowed credit only to the extent of Rs.44,04,422/-. In view of this, the AO is directed to verify and allow the credit for taxes paid to the extent of the credit available as per 26AS. Subject to this direction, this ground of appeal is partly allowed.”*

8.2 We do not find any infirmity in the order of learned CIT-A in issuing directions to the A.O to verify the claim of the assessee on merits after due verification with 26AS. We direct the A.O to verify the claim of the assessee and allow the credit of prepaid taxes by way of TDS receivable as is reflected in 26AS after due verification on merits in accordance with law. We order accordingly.

9.1 The next ground is with respect to the grant of interest on refund u/s. 244A and 234D which is consequential in nature to the grounds adjudicated by us and does not require separate adjudication which is also fairly admitted by the assessee. Thus, this ground stand dismissed.

10. In the result appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 02.01.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 02 .01.2018 को की गई ।

Sd/-

(JOGINDER SINGH)  
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 02 .01.2018

*Nishant Verma*  
*Sr. Private Secretary*

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI